

REMARKS

Claims 21 and 22 have been amended to overcome the rejections under 35 U.S.C. 112.

The Examiner rejected claims 11-23, 29 and 30 under 35 U.S.C. §103(a) as being unpatentable Japanese document 61-101297 or U.S. Patent No. 6,485,647 to Potts combined U.S. Patent No. 4,824,287 to Tracy or U.S. Patent No. 2,817,956 to Young and with U.S. Patent No. 848,279 to Ashley. Applicant respectfully traverses the Examiner's rejections.

For the U.S. Patent and Trademark Office to "establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations." Manual of Patent Examining Procedure (M.P.E.P.) Section 2143.

The Examiner admits that neither the Japanese document nor Potts discloses or suggests "first and second barriers located at opposite ends of the structure to allow the dripline to pass therethrough, but to prevent soil intrusion into the structure; at least one access opening in communication with the structure, the at least one access openings including a pipe extending to the surface of the soil; and a removable cover coupled to the access opening". After this admission, the Examiner simply points to the Tracy and Young patents for the "first and second barriers" and to the Ashley patent for the "access opening" and "cover" and then makes the bald assertion that it would have been obvious to make the three, four or five way combination of references to produce the claimed invention. The Examiner does not point to any teaching in the cited references of any motivation to combine the references to produce the claimed invention, because there is no such disclosure or suggestion in the cited references.

It is well known that when combining the content of various references "there must be some teaching, suggestion or motivation in the prior art to make the specific combination that was made by the applicant." In re Dance, 48 USPQ2d 1635, 1637 (Fed. Cir. 1998); In re Raynes, 28 USPQ2d 1630, 1631 (Fed. Cir. 1993); In re Oetiker, 24 USPQ2d 1443, 1445 (Fed. Cir. 1992). "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

Moreover, the Patent and Trademark Office can satisfy its burden of establishing obviousness “only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead an individual to combine the relevant teachings of the references.” *In re Fine*, 1837 F.2d 1071, 1073, 5 USPQ2d 1596 (Fed. Cir. 1988) (emphasis added) (citations omitted). The Federal Circuit in *In re Fine* stated that a “bald assertion” of substituting an element in a prior art reference would have been within the ordinary skill in the art is insufficient to support a finding of obviousness.” *Id.* at 1074.

The Federal Circuit has emphasized the requirement that the prior art must suggest the modifications necessary to achieve the claimed invention. The “mere possibility” that a prior art reference could be modified such that its use would lead to the particular result recited in a claim does not make that recited in the claim obvious “unless the prior art suggested the desirability of such a modification.” *In re Ochia*, 71 F.3d 1565, 1570, 37 USPQ2d 1127 (Fed. Cir. 1995). “Obviousness cannot be established by hindsight combination to produce the claimed invention.” *In re Dance*, 48 USPQ2d at 1637; *In re Gorman*, 18 USPQ2d 1885, 1888 (Fed. Cir. 1991). “Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor’s disclosure as a blueprint for piecing together the prior art to defeat patentability--the essence of hindsight.” *In re Dembiczak*, 50 USPQ2d at 1617; *Feil*, 227 USPQ at 547 (Fed. Cir. 1985). The prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983); *M.P.E.P.* § 2141.02.

Applicant submits that there is no disclosure or suggestion in the cited references of any motivation to combine these references to produce the claimed invention. Therefore such combination by the examiner uses impermissible hindsight and is therefore improper.

For at least these reasons, applicant submits that claims 11-23, 29 and 30 patentably define the invention over the Japanese document 61-101297 or U.S. Patent No. 6,485,647 to Potts combined U.S. Patent No. 4,824,287 to Tracy or U.S. Patent No. 2,817,956 to Young and with U.S. Patent No. 848,279 to Ashley. Therefore, applicant submits that claims 11-23, 29 and 30 are in condition for allowance. Such action is respectfully requested.

The Examiner also rejected claims 11-23, 29 and 30 under 35 U.S.C. §103(a) as being unpatentable over the Ashley patent in view of either the Tracy patent or the Young patent. Applicant respectfully traverses the Examiner's rejections.

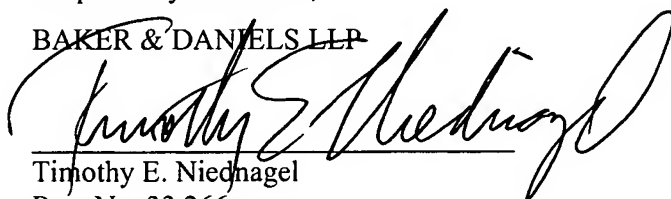
Once again, the Examiner admits that Ashley does not disclose or suggest "a structure in a trench and configured to define an open area enclosing a dripline" or the "first and second barriers located at opposite ends of the structure to allow the dripline to pass therethrough, but to prevent soil intrusion into the structure". After this admission, the Examiner again points to the Tracy and Young patents for the "a structure in a trench and configured to define an open area enclosing a dripline" and "first and second barriers" and again simply makes the bald assertion that it would have been obvious to make the two or three way combination of references to produce the claimed invention. The Examiner does not point to any teaching in the cited references of any motivation to combine the references to produce the claimed invention, because there is no such disclosure or suggestion in the cited references.

For at least these reasons, applicant submits that claims 11-23, 29 and 30 patentably define the invention over U.S. Patent No. 848,279 to Ashley in view of U.S. Patent No. 4,824,287 to Tracy or U.S. Patent No. 2,817,956 to Young. Therefore, applicant submits that claims 11-23, 29 and 30 are in condition for allowance. Such action is respectfully requested.

In the event that the examiner has questions related to this Amendment, or to the application in the general, the undersigned would appreciate the opportunity to address those questions in a telephone interview to expedite the prosecution of this application for all concerned.

Respectfully submitted,

BAKER & DANIELS LLP

A large, stylized handwritten signature in black ink, which appears to read "Timothy E. Niednagel". The signature is written over a horizontal line.

Timothy E. Niednagel
Reg. No. 33,266